



Battle Creek Zoning Board of Appeals

Staff Report

Meeting: January 12, 2010
Agenda Item: 5. B.

To: Zoning Board of Appeals
From: Glenn Perian, Senior Planner
Subject: Petition for a use variance (Z-2-10) to permit two dwelling units in an R-1C "Single Family Residential District" at property located at 68 East Emmett Street, Parcel #3170-00-058-0.

Summary

This report addresses a petition from Marion Pinkerton and Richard Green seeking approval of a Use Variance (Z-2-10), to allow a two family dwelling in an R-1C "Single Family Residential District".

Background/Project Information

The subject site is located at 68 E. Emmett Street. Assessing records show the lot is approximately 75' feet wide by 110' feet deep with an area of approximately .19 acres and is located within the R-1C (Single Family) District. The subject lot meets the minimum lot area and width standard for the R-1C zone. The lot is generally rectangular in shape and the topography of the lot is generally flat with no observable grade changes. The Appellant is requesting a use variance to permit a 2 family dwelling in an R-1C "Single Family Residential District." In this case, the Appellant states "the property has been used as a two-family rental unit for at least 2 years." However, a 2007 rental registration permit application on file with the City indicates that the property was applied for and registered as a single family rental property containing only one dwelling unit.

There are no records in the form of building permits or zoning variances that would indicate the additional apartment unit was established legally. Chapter 1288.05 states:

VIOLATIONS; REMOVAL OR CORRECTION.

A nonconforming structure that was erected, converted or structurally altered in violation of any previous Zoning Code adopted by the City of Battle Creek or the Township of Battle Creek shall not be validated by the adoption of this Zoning Code, and such violation or any violation of this Zoning Code may be ordered to be removed or corrected by the proper official at any time.

(Ord. 36-84. Passed 12-18-84.)

The property owner in this case has made application to the Zoning Board of Appeals to allow for a two-unit dwelling to be established in an R-1C zone.

Surrounding Land Uses

The subject property is located on E. Emmett Street, just south of Battle Creek Health System Hospital. There are residential uses to the south, east, and west.



Aerial Photo of subject

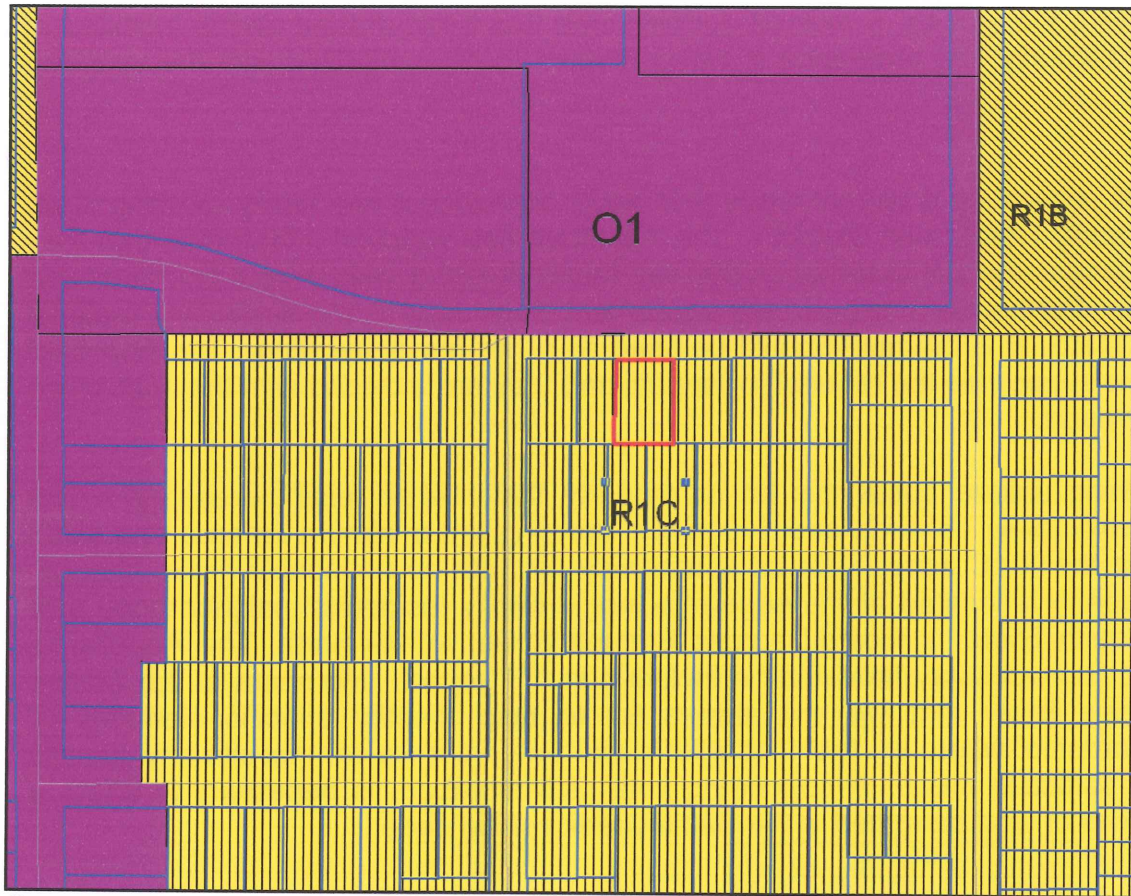
Legal Description

ASSRS PLAT OF FREMONT HEIGHTS LOT 58 & W 25 FT OF LOT 59

Public Hearing and Notice Requirements

An advertisement of this public hearing was published in the Battle Creek SHOPPER NEWS on Wednesday, December 23, 2009 – not less than the 15 days before the hearing as required by State Law and ordinance.

Notices of the public hearing were also sent by regular mail on December 21, 2009 to 44 properties located within 300 feet of the subject parcel.



Current zoning of subject parcel and surrounding area

Applicable Zoning Ordinance Provisions

Chapter 1234.04 (b) (1) authorizes the Zoning Board of Appeals to grant variations in the yard requirement of any district where there are unusual and practical difficulties or unnecessary hardships in the carrying out of the requirements of the Zoning Code due to the irregular shape of the lot or topographical conditions, provided that such a variation will not seriously affect any adjoining property or the general welfare of the public; and

Chapter 1234.04 (b) (2) authorizes the Zoning Board of Appeals to grant variations, upon appeal, whenever a property owner can show that strict application of the provisions of the Zoning Code relating to the use of buildings or structures or to the use of land will impose upon them unusual and practical difficulties or hardship. This section requires that such variations of the strict application of this Zoning Code as are in harmony with its general purpose and intent, but only when the Board is satisfied that a granting of such variation will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variation from the Master Plan, as established by the Zoning Code, and that the surrounding property will, at the same time, be properly protected.

Please note that the above language comes directly from the City of Battle Creek zoning ordinance. However, as outlined in the Michigan Zoning Enabling statute, only the "unnecessary hardship" factor should be considered when reviewing use variance requests.

In accordance with the statute, a revised decision tree has been drafted and is included in this packet. Additionally, the ordinance is being revised to be consistent with the enabling legislation.

Analysis

The Appellant is requesting a use variance that would authorize a two-family dwelling in an R-1C "Single Family Residential District". The Appellant has supplied information that they bought the property under the assumption that two-family dwelling units were a permitted use for the property. Furthermore, a purchase agreement is included in the supporting material that essentially states that the home could be used as a two-family dwelling. The Appellant supplied reasons supporting the request for appeal and they are included with the application and part of this report.

Is there something unique about this lot or property that makes relief necessary? The property is approximately 75' wide and 110' deep, meeting the minimum lot area and width requirements for the R-1C zone. The lot is relatively flat with no noticeable grade change. The subject property is located at the edge of a single family residential neighborhood with Battle Creek Health Systems located across Emmett Street to the north. The Appellant's complete stated "unnecessary hardship" is included in this report. Members of the Zoning Board of Appeals know that we will always try to help identify specific elements of "unnecessary hardship" where we feel that relief is warranted but we can not site any specific reasons in this particular case. A concurring vote of 5 members is necessary to effect a variance from uses of land permitted in the Battle Creek zoning code.



FINDINGS

In consideration of all variations from the Zoning Code, the Board shall, before making any such exceptions or variations, in a specific case, first determine that the conditions listed below are satisfied. We have provided a rationale for each condition set forth below for Use Variances:

- 1) Staff finds that there is not an unnecessary hardship for the property owner to use the land in a manner prohibited by the uses permitted in the R-1C zoning district. Staff believes the property can be reasonably used in compliance with the zoning code and for this reason we do not believe that there is an unnecessary hardship in this case.

- 2) Staff does not believe that the proposed use variance is in harmony with the general purpose and intent of the zoning code. We think the property could be converted to a single family use permitted in the R-1C district, and we understand that there will be a loss of rental income in doing so.
- 3) While we understand that the two-family use and building may have been in operation for a period of time in the past, we do not think that by granting the proposed use variance that it will serve as anything more than a convenience to the applicant from converting the property to single-family use. We do not think that the granting of a use variance will alleviate some demonstrable and unusual hardship so great as to warrant a variation from the master plan.

If the Zoning Board finds that all of the above conditions have been satisfied, then all of the following standards must be met as well to grant the requested use variance.

- 1) Staff does not believe the petitioner has clearly demonstrated that unnecessary hardship will, in fact, exist if the proposed variance is not granted.
- 2) Staff does not necessarily believe that the appellant has created the unnecessary hardship associated with this request. At some point in time the building was allegedly converted to a two-family use. However, current zoning of the property does not allow the proposed use. It is the intent of the zoning code to have all properties and uses in compliance with the zoning code and zoning districts where they are located.
- 3) Staff does not believe that the unnecessary hardship is exceptional and peculiar to the property of the person requesting the variance in that the property is located in the center of an R-1C district on E. Emmett Street. The property could be used for any use permitted in the R-1C district.
- 4) Staff does not think that the Appellant has furnished documentation to convince and indicate to us that unnecessary hardship does, in fact, exist.
- 5) Staff does not believe the alleged unnecessary hardship which will result in a failure to grant the variance is substantially more than a mere inconvenience in this case. We understand that there will be a loss of rental income, possibly substantial, to convert the property to a conforming single-family use.
- 6) Staff does not think that by allowing the variance substantial justice being done will result, considering the public benefits intended to be secured by the Zoning Code, the individual hardships that will be suffered by a failure of the Board to grant a variance and especially the rights of others whose property would be affected by the allowance of the variance.
- 7) Every finding of fact of the Board shall be supported in the record of proceedings of the Board.

- 8) Nothing contained in this section shall be construed to authorize the Board to change the terms of this Zoning Code.

Recommendation

The Zoning Board of Appeals can approve, approve with conditions, or deny this request. The Zoning Board of Appeals can also table or postpone the request pending additional information. Planning staff recommends that the Zoning Board of Appeals deny the Use Variance (Z-2-10) based on the above listed findings contained in this staff report.

Attachments

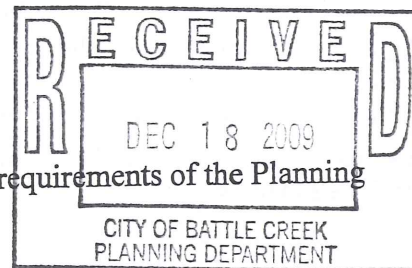
The following information is attached and made part of this Staff Report.

1. ZBA Petition Form (Petition #Z-2-10), cover letter, and attachments A-G supplied by Applicant
2. General Property Information gathered from Assessing Records
3. Use Variance Standards Decision Tree outlined by the City Attorney's Office titled "Use Variance Standards Revised Nov 2009"
4. An email from Clerks office, Re: resident opposition

Date: _____

Appeal No. 2-02-10

APPLICATION FOR A VARIANCE
ZONING BOARD OF APPEALS
City of Battle Creek Michigan



An Appeal to the Zoning Board of Appeals to authorize a variance from the requirements of the Planning and Zoning Code (Part Twelve) of the City of Battle Creek.

Name of Appellant: Marion Pinkerton and Richard Green

Address: 68 East Emmett Street Phone: (803)640-7501

Name of Owner (if different from Appellant): N/A

Address: _____ Phone: _____

TO THE ZONING BOARD OF APPEALS: Request is hereby made for permission to:
(Choose One) **Extend** **Erect** **Waive** **Use** **Convert** **Enclose**

the property into two dwelling units, which is how the property was being used
when purchased by the appellants in September 2009.

contrary to the requirements of Section(s) 1246.02 of the Planning and Zoning Code, upon the premises known as 68 and 68½ East Emmett Street, Battle Creek, MI, in accordance with the plans and/or plat record attached.

The proposed building or use requires Board action in the following area(s):

Convert the single-family rental dwelling into a two-family dwelling unit,
which is how it has been for at least two years.

Property/Tax I.D.# No. 3170 - 00 - 058 - 0

Size of the Lot: Width 75 Ft. Depth 110 Ft.
Size of Proposed Building: Width _____ Depth _____ Height _____

The following reasons are presented in support of this appeal (complete each section):

a) This property cannot be used in conformance with the ordinance without the requested variance because:
the property is zoned RI-C single-family dwelling residential district, and has
a rental permit, PRO7-00011 (See Exhibit A). The prior owner rented two units

which the City acknowledged (See building information attached as Exhibit B). However,
when applicant/owner applied for a new rental permit, they were told the property
could only be rented as one unit, not two.

- b) This problem is due to a unique situation not shared in common with nearby property owners because:

Applicant purchased the property based on representation they could live in one unit and rent the other to pay for the properties operating costs. See real estate listing Exhibit C, Purchaser Agreement, Exhibit D and Seller's Disclosures Exhibit E. Applicant is not aware of nearby property owners who purchased the property based on representations and realistic expectations of renting part of the property to pay for the operating costs of the property.

- c) Granting the variance would not alter the essential character of the area because:

The area around the property is primarily detached dwellings with the Battle Creek Health System on the other side of Emmett Street. The property has been used as a two-family rental unit for at least 2 years. The exterior structure of the property (Exhibit F), is consistent with the essential character of the neighborhood. In fact, the Applicants are making substantial maintenance upgrades to the property, which will improve the neighborhood and potentially increase the tax base of the City. See Permits (Exhibit G).

- d) The problem is not self-created because:

The property was being used as a two-family rental unit when purchased by Applicant.

The property was a registered rental. The building information from the City indicated it is a multiple family unit and the Seller and Seller's Agent represented and disclosed a two dwelling unit.

- e) **USE VARIANCES ONLY** It is not possible to use this particular property for any other use currently allowed in the zoning district because:

Prior to applicants' purchase, the property was divided into two distinct units, with separate entrances, heating, electricity and plumbing systems. There is no interior access from one unit to the other. Applicants reserve the right to argue this is a non-use variance.

I hereby affirm that, to the best of my knowledge, all the above and accompanying statements and drawings are correct and true. In addition, I give permission to the City of Battle Creek's Planning Department staff to access my property, if necessary, to take photographs of the subject of this appeal.

Marion Pinkerton and Richard Green

(Print Appellant Name)

(Signature of Appellant)

68 East Emmett Street, Battle Creek, MI 49017

(Address of Appellant)

If you require additional information or assistance in filling out this application, please contact the Planning Department at (269) 966-3320.

STEFFEL & STEFFEL
ATTORNEYS AND COUNSELLORS AT LAW
332 EAST COLUMBIA AVENUE
BATTLE CREEK, MI 49015

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TELEPHONE: (269) 962-3545

FACSIMILE: (269) 964-8661

e-mail: kbieberich@steffellaw.com

KENT A. BIEBERICH

<http://steffellaw.lawoffice.com/>

December 18, 2009

City of Battle Creek
Zoning Board of Appeals
Commerce Pointe
77 East Michigan Avenue, Ste 204
Battle Creek, MI 49017

Re: 68 East Emmett Street, Battle Creek, MI

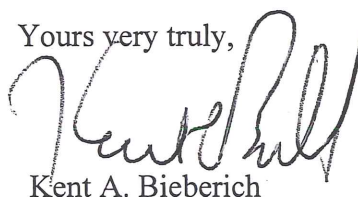
Dear Clerk :

Please find enclosed an original and 1 copy of an application for a variance to the Zoning Board of Appeals, along with a check in the amount of \$60.00 for the filing fee.

Please advise of the dated and time of the hearing and if any further information is needed to process this application.

Thank you.

Yours very truly,



Kent A. Bieberich

KAB/dek
enclosure

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A

Detailed Permit Information

[Back to Non-Printer Friendly Version] [Send To Printer]

Permit: PR07-00011

Property Address [collapse]68 E EMMETT ST
BATTLE CREEK, MI 49017-3304**Permit Information** [collapse]

Number:	PR07-00011	Category:	RENTAL
Type:	RENTAL	Status:	EXPIRED
Applied Date:	11/20/2007	Expire Date:	11/23/2009
Issue Date:	11/29/2007	Finaled Date:	

Work Description:**Stipulations:**

Sale or transfer of the property; Violations of the Building or Housing Code; In accordance with any terms and conditions placed on the permit.

Contractor Information [collapse]

OWNER OF PROPERTY

Applicant Information [collapse]JUSTICE, ROGER D
7501 MORGAN RD E
BATTLE CREEK, MI 49017-9705

Phone:	N/A
Fax:	N/A

Date of Birth:	N/A
Drivers Lic #:	N/A

Owner of Issue Information [collapse]JUSTICE, ROGER D
7501 MORGAN RD E
BATTLE CREEK, MI 49017-9705

Phone:	N/A
Fax:	N/A

Date of Birth:	N/A
Drivers Lic #:	N/A

Occupant of Issue Information [collapse]

N/A

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B

Building Information

[Back to Non-Printer Friendly Version] [Send To Printer]

Parcel: 3170-00-058-0

1 building(s) found.

<u>Description</u> ↑	<u>Floor Area</u>	<u>Yr Built</u>
<input type="checkbox"/> Residential Building 1	2102 Sq. Ft.	1947

General Information

Floor Area:	2102 Sq. Ft.	Estimated TCV:	N/A
Garage Area:	460 Sq. Ft.	Basement Area	1174 Sq. Ft.
Foundation Size:	1222 Sq. Ft.		
Year Built:	1947	Year Remodeled:	0
Occupancy:	Single Family	Class:	BC
		Tri-Level?:	NO
Percent Complete:	100%	Heat:	Forced Heat & Cool
AC w/Separate Ducts:	NO	Wood Stove Add-on:	NO
1st Floor Rooms:	4	Water:	N/A
Bedrooms:	4	Sewer:	N/A
Style:	MULTIPLE UNITS		

Area Detail - Basic Building Areas

Height	Foundation	Exterior	Area	Heated
1.75 Story	Full Bsmnt.	Comm. Brick	1174 Sq. Ft.	1.75 Story
1 Story	Slab	Comm. Brick	48 Sq. Ft.	1 Story

Area Detail - Overhangs

Height	Exterior	Area	Included in Size for Rates

Basement Finish

Recreation:	0 Sq. Ft.	Percent Good:	0
Living Area:	0 Sq. Ft.	Percent Good:	0
Walk Out Doors:	0	No Concrete Floor Area:	0 Sq. Ft.

Plumbing Information

3-Fixture Baths:	2
2-Fixture Baths:	1
Extra Sink:	1

Built-In Information

Dishwasher:	1
Garbage Disposal:	1
Vented Hood:	2
Microwave:	1

Fireplace Information

Interior 2-Story:	1
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Garage Information**Garage # 1**

Area:	460 Sq. Ft.	Exterior:	Siding
Foundation:	42 Inch	Common Wall:	1 Wall
Year Built:	1947	Finished?:	NO
Auto Doors:	0	Mech Doors:	0

Porch Information

CGEP(1 Story):	120 Sq. Ft.	Foundation:	Standard
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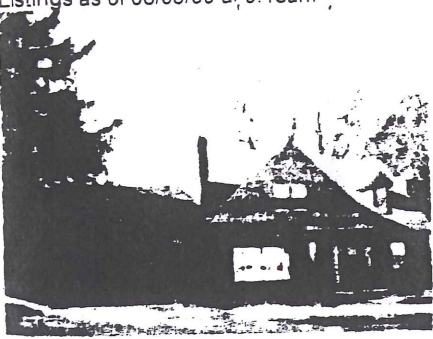
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C

Residential SWMRIC Client Detail Report

Property Type Residential Include Property Subtype Single Family Area Battle Creek Street Address 68 emmett Status Active
Listings as of 08/08/09 at 9:43am

Page 1



MLS#: 2917825 St: Active
Area: B - 1 Battle Creek
Address: 68 Emmett St Battle Creek, MI 49017
Municipality: Battle Creek City
County: Calhoun
Tax ID: 3170000580
LotDim: 75x100
Body of Wtr:

PT: RESI

LP: 111.900
SPT: Single Family

Acres:
Rd Front: 75
Water Frontage:

WtrFrnt: No

	Upper	Main	Lower	Bsmt	Total
Bedrooms	2	2			4
Full Baths	1	1			2
Half Baths					0
Fin/Level	780	1222			2002
Total Sqft					

Total Sqft Above Grade:

2002

Directions: north ave to Fremont
Cross St: north ave & Fremont

Room Dimensions/Levels:

Kitchen: 12 x 12 M
FrmIDin:
DinArea: 9 x 11 M
Family:
Living: 12 x 20 M
Recreation:
Den/Study:
Laundry: 9 x 13 B
Mstr Bath:
Mstr Bedroom: 9 x 13 M

Bedroom 2: 8 x 11 M
Bedroom 3: 10 x 14 U
Bedroom 4: 9 x 14 U
Bedroom 5:
of Rooms: 9
Additional 15 x 16 U
Room:

of Fireplaces:
Approx Year Built: 1947
Income Prop: No
Assn Fee:
Assn Fee Pay:
Assoc Buy In Fee:

Legal: Assrs Plat of Fremont Hts Lot 58 and W25' of Lot 59
Taxable Value: 54524
Annual Prop Taxes: 3452
Special Assmt/Typ: none known
School District: Battle Creek
Middle School: wk kellogg jr high

SEV: 54524
Tax Year: 2008

For Tax Year: 2008
Homestead%: 0

Zoning:
High School:
Elementary School: fremont

Design: Traditional
Sewer: Public
Driveway:

Stories: 2
Water: Public

Mineral Rights Unknown
Roofing Comp Shingle
Lot Description Sidewalk
Util. Avl at Street Natural Gas
Kitchen Features Eating Area
Additional Items Range
Additional Items Dishwasher
Additional Items Washer
Additional Items Water Soft/Own
Heat Source Natural Gas
Air Conditioning Window Unit
Terms Available Cash/Conventional

Garage 2
Windows Screens
Utilities Attached Natural Gas
Util. Avl at Street Pub Sewer
Fireplace Living
Additional Items Oven
Additional Items Garb Disposal
Additional Items Ceiling Fans
Additional Items Water Soft/Rent
Heat Type Forced Air
Exterior Feature(s) 3 Season Room

Exterior Material Brick
Substructure Full Basement
Utilities Attached Telephone Line
Util. Avl at Street Pub Water
Additional Items Refrigerator
Additional Items Microwave
Additional Items Dryer
Additional Items Gar Door Opener
Additional Items Wood Floor
Air Conditioning Central Air
Street Type Paved

DOUBLE THE BENEFITS of home ownership-as you move into your classic brick tudor and rent the second unit to cover your payment. Enjoy the enclosed back porch and enjoy the beautiful yard, or just enjoy the peace of mind that comes from knowing your furnace air conditioning, water heater and roof shingles have all been updated in the last few years. Newer carpeting and fresh paint in your home. Separate furnaces and electrical boxes for hassle-free renting. Stoves and refrigerators included.

Presented By:

Richard A Reece

Primary: 269-968-0755
Secondary: 269-579-9073
E-mail: richardareece@yahoo.com
Web Page: http://www.reecerealty.com



Reece Realty, Inc.

724 Capital Ave SW
Battle Creek, MI 49015
269-968-0755
Fax: 269-968-1527
See our listings online:
http://www.reecerealty.com

August 2009

Featured properties may not be listed by the office/agent presenting this brochure.

All information contained herein should be deemed reliable but not guaranteed. all representations are approximate and individual verification is recommended

D

WEST MICHIGAN REGIONAL PURCHASE AGREEMENT

Any reference to "days" in this Agreement refers to calendar days and any reference to "time" refers to local time.

DATE: 8/18/09 (time) MLS # 2917825
 SELLING OFFICE: Keece Realty, Inc. REALTOR® PHONE: 289-8755 FAX: _____
 LISTING OFFICE: 11 REALTOR® PHONE: _____ FAX: _____

1. **Agency Disclosure:** The Undersigned Buyer and Seller each acknowledge that they have read and signed the Disclosure Regarding Real Estate Agency Relationships. The selling licensee is acting as (check one):
☒ Agent/Subagent of the Seller ☐ Buyer's Agent ☐ Dual Agent (with written, informed consent of both Buyer and Seller)
☐ Transaction Coordinator

2. **Seller's Disclosure Statement:** (This paragraph applies to sales of one-to-four family residential units.)
☒ Buyer has received Seller's Disclosure Statement dated 5/6/09, subject to Seller's certification in Paragraph 29.
☐ Buyer has not received Seller's Disclosure Statement, and Buyer's obligations under this Contract are subject to Buyer's receipt of Seller's Disclosure Statement and acceptance of Seller's Disclosure Statement within 72 hours after receipt in the case of personal delivery or 120 hours in the case of delivery by mail. Exceptions:

3. **Lead-Based Paint Addendum:** Transactions involving homes built prior to 1978 require a written disclosure which is hereby attached and will be an integral part of this Agreement.

4. **Property Description:** Buyer hereby offers to buy the property located in the ☒ City ☐ Village ☐ Township of Battle Creek Calhoun County, Michigan, commonly known as 88 + Eugene St (St./Ave., with the following legal or tax description: Assrs Plot of Fremont Hts
 PP# 3170000580

The following paragraph applies only if the Premises include unplatted land:
 Seller agrees to grant Buyer at closing the right to make (insert number) _____ divisions(s) under Section 108(2), (3), and (4) of the Michigan Land Division Act. (If no number is inserted, the right to make divisions under the sections referenced above stays with any remainder of the parent parcel retained by Seller. If a number is inserted, Seller retains all available divisions in excess of the number stated; however, Seller and/or REALTOR® do not warrant that the number of divisions stated is actually available.) If this sale will create a new division, Seller's obligations under this Agreement are contingent on Seller's receipt of municipal approval on or before _____ of the proposed division to create the Premises.

5. **Price:** Buyer offers to buy the property for the sum of \$ 100,000.00
One Hundred Thousand and 00/100 U.S. Dollars

6. **Terms:** The Terms of Purchase will be as indicated by "X" below: (Other unmarked terms of purchase do not apply.)
 SOURCE OF FUNDS TO CLOSE: Buyer represents that the funds necessary to close this transaction on the terms specified below are currently available to Buyer in cash or an equally liquid equivalent.

☐ CASH The full purchase price upon execution and delivery of Warranty Deed. Buyer Agrees to provide Buyer Agent/Dual Agent verification of funds within five (5) days of the date this Agreement is fully executed, and consents to the disclosure of such information to Seller and/or Seller's Agent.

☒ NEW MORTGAGE The full purchase price upon execution and delivery of Warranty Deed, contingent upon Buyer's ability to obtain a Cash type 30 (year) mortgage in the amount of 80 % of the sale price bearing interest at a rate not to exceed _____ % per annum (rate at time of loan application), on or before the date the sale is to be closed. Buyer agrees to apply for a mortgage loan, and pay all fees and costs customarily charged by Buyer's lender to process the application, within _____ days after this Agreement is fully executed, not to impair the Buyers' credit after the date hereof, and to accept such loan if offered. Should any part of the new mortgage be FHA/VA insured, ☐ Seller ☐ Buyer will agree to pay an amount not to exceed \$ _____, representing repairs required as a condition of financing. Buyer ☐ agrees ☐ does not agree to authorize Buyer's Agent/Dual Agent to obtain information from Buyer's lender regarding Buyer's financing, and consents to the disclosure of this information to Seller and/or Seller's Agent. Exceptions:

☐ SELLER FINANCING (check one of the following): ☐ CONTRACT or ☐ PURCHASE MONEY MORTGAGE

In the case of seller financing, Buyer agrees to provide Seller with a credit report within 72 hours of Seller's acceptance of this offer. If the credit report is unacceptable to the Seller, the Seller shall have the right to terminate this offer within 48 hours of Seller's receipt, or if Buyer fails to provide said credit report to Seller within the time frame allotted, the Seller shall have the right to terminate this offer within 48 hours. Seller is advised to seek professional advice regarding the credit report.

MP

Buyer's Initials

Seller's Initials

\$ _____ upon execution and delivery of a _____ form (name or type of form and revision date), a copy of which is attached, wherein the balance of \$ _____ will be payable in monthly installments of \$ _____ or more including interest at _____ % per annum, interest to start on date of closing, and first payment to become due thirty (30) days after date of closing. The entire unpaid balance will become due and payable _____ months after closing. Exceptions:

☐ EQUITY (check one of the following): ☐ Formal Assumption or ☐ Informal Assumption

Upon execution and delivery of: ☐ Warranty Deed subject to existing mortgage OR ☐ Assignment of Vendee Interest in Land Contract, Buyer to pay the difference (approximately \$ _____) between the purchase price above provided and the unpaid balance (approximately \$ _____) upon said mortgage or land contract, which Buyer agrees to assume and pay. Buyer agrees to reimburse Seller for accumulated funds held in escrow, if any, for payment of future taxes and insurance premiums, etc. Exceptions:

7. **Contingencies:** The Buyer's obligation to consummate this transaction (check one):

☒ **IS NOT CONTINGENT** - is not contingent upon the sale or exchange of any other property by Buyer.

☐ **IS CONTINGENT UPON CLOSING** - is contingent upon closing of a sale or exchange of Buyer's property located at: _____ on or before _____.

A copy of Buyer's agreement to sell or exchange that property is being delivered to Seller along with this offer.

☐ **IS CONTINGENT UPON THE SALE AND CLOSING** - is contingent upon the execution of a binding agreement and the closing of a sale or exchange of Buyer's property located at _____ on or before _____.

Seller will have the right to continue to market Seller's property until Buyer enters into a binding agreement to sell or exchange Buyer's property and delivers a copy thereof to Seller. During such marketing period, Seller may enter into a binding contract for sale to another purchaser on such price and terms as the Seller deems appropriate, and in such event this Agreement will automatically terminate and Buyer's deposit will be refunded. Exceptions:

8. **Fixtures and Improvements:** All improvements and appurtenances are included in the purchase price including, if now in or on the property, the following: all buildings; landscaping; lighting fixtures and their shades and bulbs; ceiling fans; hardware for draperies and curtains; window shades and blinds; built-in kitchen appliances, including garbage disposal and drop-in ranges; wall to wall carpeting, if attached; all attached mirrors; all attached shelving; attached work benches; stationary laundry tubs; water softener (unless rented); water heater; incinerator; sump pump; water pump and pressure tank; heating and air conditioning equipment (window units excluded); attached humidifiers; heating units, including add-on heating stoves and heating stoves connected by flue pipe; fireplace screens, inserts, and grates; fireplace doors, if attached; liquid heating and cooking fuel tanks if owned by Seller; TV antenna and complete rotor equipment; satellite dish and necessary accessories and complete rotor equipment; all support equipment for inground pools; screens and storm windows and doors; awnings; installed basketball backboard, pole and goal; mailbox; flagpole(s); fencing, invisible inground fencing and all related equipment, including collars; detached storage buildings; underground sprinkling, including the pump; installed outdoor grills; all plantings and bulbs; garage door opener and control(s); and any and all items and fixtures permanently affixed to the property; and also includes:

all appliances up and down - Ranges, Refrigerator, washer & dryer, all Blt-Tas, all attached fixtures, all window coverings - Window Air condition up stairs.

but does not include:

9. **Heating and Cooking Fuels:** Liquid heating and cooking fuels in tanks are included in the sale and will transfer to Buyer at time of possession. Sellers are responsible for maintaining heating and cooking liquid fuels at an operational level and shall not permit fuels to fall below 10% in the tank(s) at the time of possession, except that the tank(s) may be empty only if now empty. Further, the seller is precluded from removing fuel from tank(s) other than what is expended through normal use. Exceptions:

10. **Assessments (choose one):**

☒ Seller will pay any existing assessments which are due and payable, or a lien or both, on the property on or before the date first written above.

☐ Buyer will assume or pay any assessment balance which remains after Seller pays for any assessment installments which are due and payable on or before the date first written above.

68 Emmett St
Subject Property Address/Description

8/8/09
Date

Time

MP

☐ Buyer's Initials

☐ Seller's Initials

11. **Property Taxes:** Seller will be responsible for any taxes billed prior to those addressed below. Buyer will be responsible for all taxes billed after those addressed below.

Buyer is also advised that the state equalized value of the property, principal residence exemption information and other real property tax information is available from the appropriate local assessor's office. Buyer should not assume that buyer's future tax bills on the property will be the same as the seller's present tax bills. Under Michigan law, real property tax obligations can change significantly when property is transferred.

☐ No proration. (Choose one):

☐ Buyer ☐ Seller will pay taxes billed summer _____ (year);

☐ Buyer ☐ Seller will pay taxes billed winter _____ (year);

☒ Calendar Year Proration (all taxes billed or to be billed in the year of the closing). Calendar year tax levies will be estimated, if necessary, using the taxable value and the millage rate(s) in effect on the day of closing, broken down to a per diem tax payment and prorated to the date of closing with Seller paying for January 1 to day of closing.

☐ Fiscal Year Proration - Taxes will be prorated as though they are paid in (choose one): ☐ advance. ☐ arrears.

Fiscal Year will be assumed to cover a 12 month period from date billed, and taxes will be prorated to the date of closing. Fiscal year tax levies will be estimated, if necessary, using the taxable value and millage rate(s) in effect on the day of closing, broken down to a per diem tax payment and prorated to the date of closing with Seller paying to day of closing.

Exceptions:

12. **Well/Septic:** Within **ten (10) days** after this Agreement is fully executed, the Seller will arrange and pay for an inspection and written report by the county health department or a mutually agreed upon qualified inspector, if allowed by the health department, of the primary well used for human consumption (including a water test for coliform bacteria and nitrates) and septic systems (including tank pumping, if required) in use on the property. If the evaluation report(s) in any of the above circumstances disclose(s) a condition which the Buyer deems unacceptable or that doesn't meet county standards where the county requires minimum standards as a condition of sale, Buyer shall notify the Seller or Listing Broker in writing, within **five (5) days** after the date Buyer has received the applicable report(s), of such condition and request corrective action. If Seller does not agree or fails to respond within **fifteen (15) days** of Buyer's requested corrective action, Buyer shall have the right to terminate this Agreement by providing written notice to Seller and/or Listing Broker within **three (3) days** from receipt of Seller's written refusal (if any) or from the expiration of the aforementioned **fifteen (15) day** period, and Buyer's good-faith deposit will be refunded. Buyer agrees that the contingency provided by this paragraph shall be deemed to have been waived if (1) Buyer fails to provide written notice of a condition deemed unacceptable within **five (5) days** after Buyer has received the applicable report(s); or (2) Buyer fails to terminate this Agreement in writing as provided above. If these contingencies are waived or if Buyer elects to close this transaction, Buyer shall be deemed to have accepted the well and/or septic in its "as is" condition as of the date of closing. Exceptions:

N.A.

13. **Inspections & Insurability:** By signing this Agreement, Buyer is representing that the Buyer has the right to inspect the buildings, premises, and building components and systems, or have the buildings, premises, and building components and systems inspected by experts selected by the Buyer.

☐ The Buyer has waived his/her right to inspections.

☒ The Buyer has elected to arrange and pay for any inspections including, but not limited to Plumbing; Heating, Ventilating & Air Conditioning; Electrical; Telephone (hard-wired landline); Structural, including roof; Termites and other wood destroying insects; Radon, Air Quality and/or Mold; Water Test for Lead and Nitrites (required if FHA or VA financing). Any damage, misuse, abuse, or neglect of any portion of the property or premises as a result of inspections will be Buyer's responsibility and expense.

It is the Buyer's responsibility to investigate (i) whether the property complies with applicable codes and local ordinances and whether the property is zoned for Buyer's intended use; and (ii) whether the Buyer can obtain a homeowner's insurance policy for the property at price and terms acceptable to Buyer. In the event of VA financing, Seller will pay for the inspection for termites and other wood destroying insects. All inspections and investigations will be completed within **ten (10) days** after Seller's acceptance of Buyer's offer or Buyer's acceptance of any counteroffer, as the case may be. If the results of Buyer's inspections and investigations are not acceptable to Buyer, the Buyer may, within the above referenced period, by written notice to Seller, either terminate this Agreement and receive a refund of Buyer's good-faith deposit, or make a written proposal to Seller to correct unsatisfactory conditions that Buyer does not accept. If the Buyer fails to make a written proposal within the above referenced time period, then Buyer will be deemed to have accepted the results of the inspection reports and investigations without repairs or corrections and will proceed to closing according to the terms and conditions of this Agreement. Seller may negotiate with Buyer or, by written notice to Buyer, accept Buyer's proposal or terminate this Agreement. Failure of the Seller to respond or to arrive at a mutually agreeable resolution within **three (3) days** after Seller's receipt of Buyer's proposal shall result in a termination of this Agreement and a return of any applicable good-faith deposit.

Buyer agrees that Buyer is not relying on any representation or statement made by Seller or any real estate salesperson (whether intentionally or negligently) regarding any aspect of the premises or this sale transaction, except as may be expressly set forth in this Agreement, a written amendment to this Agreement, or a disclosure statement separately signed by the Seller. Accordingly, if Buyer

CS Emmett St

Subject Property Address/Description

8/8/09

Date

Time

MP

Buyer's Initials

Seller's Initials

chooses no inspections, fails to complete inspections, or submits no written proposals, Buyer agrees to accept the premises "as is" and "with all faults", except as otherwise expressly provided in the documents specified in the preceding sentence. Exceptions:

14. **Municipal Compliances:** The Seller will arrange and pay for current certificates of occupancy, sidewalk compliance, and smoke detector ordinances, if applicable.
15. **Title Insurance:** Seller agrees to convey marketable title to the property subject to conditions, limitations, reservation of oil, gas and other mineral rights, existing zoning ordinances, and building and use restrictions and easements of record. A 1998 ALTA Owner's Policy of Title Insurance in the amount of the purchase price shall be ordered by Seller and furnished to Buyer at Seller's expense, and a commitment to issue a policy insuring marketable title vested in Buyer, including a real estate tax status report, will be made available to Buyer within **seven (7) days** after this Agreement is fully executed. If Buyer so chooses, or if the property is not an existing residential structure (one to four family) on a residential parcel or a condominium unit, then a 2006 ALTA Owners' Policy of Title Insurance shall be provided.

If Buyer objects to any conditions, Buyer may, within **three (3) days** from the aforementioned seven (7) day period, by written notice to Seller, either terminate this Agreement and receive a refund of Buyer's good-faith deposit, or make a written proposal to Seller to correct unsatisfactory conditions that Buyer does not accept. If Buyer fails to make a written proposal within the above referenced time period, then Buyer will be deemed to have accepted the conditions and will proceed to closing according to the terms and conditions of this Agreement. Seller may negotiate with Buyer or, by written notice to Buyer, accept Buyer's proposal or terminate this Agreement. Failure of Seller to respond or to arrive at a mutually agreeable resolution within three (3) days after Seller's receipt of Buyer's proposal shall result in a termination of this Agreement and a return of any applicable good-faith deposit. Exceptions:

16. **Property Survey:** Broker advises that Buyer should have a survey performed to satisfy Buyer as to the boundaries of the property and the location of improvements thereon. The Buyer has elected to obtain:

- ☒ A boundary survey certified to Buyer with iron corner stakes and with improvements and easements located on a map of survey.
☐ A surveyor's report or sketch (not a boundary survey) re-certified to Buyer showing the approximate location of improvements.
☐ No survey.

Survey to be paid for by: ☒ Buyer ☐ Seller

When closing occurs, Buyer shall be deemed to have accepted the boundaries of the property and the location of such improvements thereon.

Exceptions:

17. **Home Protection Plan:** Buyer and Seller have been informed that home protection plans may be available. Such plans may provide additional protection and benefit to the parties. Exceptions:

N.A.

18. **Prorations:** Rent; association dues/fees, if any; insurance, if assigned; interest on any existing land contract, mortgage or lien assumed by Buyer; will all be adjusted to the date of closing.

19. **Possession:** Seller will maintain the property in its present condition until the completion of the closing of the sale. Possession to be delivered to buyer, subject to rights of present tenants, if any:

☒ At the completion of the closing of the sale. *Sec #24*

☐ At _____ ☐ a.m. ☐ p.m. on the _____ day after completion of the closing of the sale, during which time Seller will have the privilege to occupy the property and hereby agrees to pay the Buyer \$_____ as an occupancy fee for this period payable at closing, WITHOUT PRORATION. If Seller fails to deliver possession to Buyer on the agreed date, Seller shall become a tenant at sufferance and shall pay to Buyer as liquidated damages \$_____ per day plus all of the Buyer's actual reasonable attorneys fees incurred in removing the Seller from the property.

If Seller occupies the property after closing, Seller will pay all utilities during such occupancy. Buyer will maintain the structure and mechanical systems at the property. However, any repairs or replacements necessitated by Seller's misuse, abuse, or neglect of any portion of the property will be Seller's responsibility and expense.

On the agreed delivery date, Seller shall deliver the property free of trash and debris and in broom-clean condition, shall remove all personal property (unless otherwise stated in this or an additional written agreement), shall make arrangements for final payment on all utilities, and shall deliver all keys to Buyer. Exceptions:

188 Emmett St

Subject Property Address/Description

8/8/09

Date

Time

MP

Buyer's Initials

Seller's Initials

20. **Closing:** If agreeable to both parties, the sale will be closed as soon as closing documents are ready, but not later than Sept 1st 09. An additional period of fifteen (15) days will be allowed for closing to accommodate the correction of title defects or survey problems which can be readily corrected, delays in obtaining any lender required inspections/repairs. During this additional period, the closing will be held within 5 days after all parties have been notified that all necessary documents have been prepared. Buyer and Seller will each pay their share of any title company closing fee, if applicable, except in the case of VA financing where the Seller will pay the entire closing fee. Exceptions:

21. **Good-Faith Deposit:** For valuable consideration, Buyer gives REALTOR® above named until Sept 1st 09 (time) on 8/9/09, to obtain the written acceptance of this offer and agrees that this offer, when accepted by Seller, will constitute a binding agreement between Buyer and Seller and herewith deposits \$ 1,500.00 evidencing Buyer's good faith, to be held by selling Broker or selling Broker's designee, and to apply on the purchase price. If this offer is not accepted or if the sale is not closed due to a failure to satisfy a contingency for a reason other than the fault of Buyer, the good-faith deposit shall be refunded to Buyer. If the sale is not closed as provided in this Agreement, the Broker holding the deposit will notify Buyer and Seller, in writing, of Broker's intended disposition of the deposit. If the parties do not object to such disposition in writing within fifteen (15) days after the date of Broker's notice, they will be deemed to have agreed to Broker's proposed disposition; if a party objects and no mutually agreeable disposition can be negotiated, Broker may deposit the funds by interpleader with a court of proper jurisdiction or await further actions by the parties. In the event of litigation involving the deposit, in whole or in part, either the Seller or the Buyer that is not the prevailing party, as determined by the court, will reimburse the other for reasonable attorneys' fees and expenses incurred in connection with the litigation, and will reimburse the Broker for any reasonable attorneys' fees and expenses incurred in connection with any interpleader action instituted.

22. **Professional Advice:** Broker hereby advises Buyer and Seller to seek legal, tax, environmental and other appropriate professional advice relating to this transaction. Broker does not make any representations or warranties with respect to the advisability of, or the legal effect of this transaction. Buyer further acknowledges that REALTOR® above named in the Agreement hereby recommends to Buyer that an attorney be retained by Buyer to pass upon the marketability of the title and to ascertain that the required details of the sale are adhered to before the transaction is consummated. Buyer agrees that Buyer is not relying on any representation or statement made by Seller or any real estate salesperson (whether intentionally or negligently) regarding any aspect of the property or this sale transaction, except as may be expressly set forth in this Agreement, a written amendment to this Agreement, or a disclosure statement separately signed by the Seller.

23. **Disclosure of Information:** Buyer and Seller acknowledge and agree that the price, terms, and other details with respect to this transaction (when closed) are not confidential, will be disclosed to REALTORS® who participate in the applicable Multiple Listing Service, and may otherwise be used and/or published by that Multiple Listing Service in the ordinary course of its business.

24. **Other Provisions:**

E. Deposit will be given to the Selling office within 2 Bus days of Seller's acceptance. Buyer unit to be vacated no later than Oct 1, 09 - Upper tenant may stay. All surety deposits to be given to the buyer at closing. All rents will be given to the buyer at the day of closing - starting Sept 1st

25. **Mergers and Integrations:** This Agreement is the final expression of the complete agreement of the parties and there are no oral agreements existing between the parties relating to this transaction. This Agreement may be amended only in writing signed by the parties and attached to this Agreement.

26. **Fax or Electronic Distribution.** The parties agree that any signed copy of this Agreement transmitted by facsimile or other electronic means shall be competent evidence of its contents to the same effect as an original signed copy.

27. **Buyer's Acknowledgment:** Buyer hereby acknowledges receipt of a copy of this Agreement.

Witness Dick Heace Phone _____ x Marian Pinkerton Buyer

Print Witness Name _____ MARIAN PINKERTON

Print name as you want it to appear on documents.

Buyer's Address _____

x _____ Buyer

Buyer's Phone: (Res.) _____ (Bus.) _____

Print name as you want it to appear on documents.

18 Emmett St
Subject Property Address/Description

8/8/09
Date

Time

MP

Buyer's Initials

Seller's Initials

DATE: 8/8/09 (time) _____

28. **Seller's Acceptance:** The Above Offer is Hereby Accepted: ☐ As written. ☒ As written except:

Sale price is Fine - Tent upstair is 550.00 per month, Downstair is Rent
is 600.00 per month, there is no Surety for lower Unit - Upstair's Surety is 7500.00
Rents come due on the 12th of each month - Further will a prooration on
rents to buyer at closing - Curtains belong to the tenants - the window A.C.
upstair is to the tenant.

Counteroffer, if any, expires _____, at _____ (time). Seller has the right to withdraw this counter offer and to accept other offers until Seller or Seller's Agent has received notice of Buyer's acceptance.

29. **Certification of Previous Disclosure Statement:** Seller certifies to Buyer that the property is currently in the same condition as Seller previously disclosed in Seller's Disclosure Statement dated: _____. Seller agrees to inform the Buyer in writing of any changes in the content of the disclosure statement prior to closing.

30. **Notice to Seller:** Seller understands that consummation of the sale or transfer of the property described in this Agreement will not relieve the Seller of any liability that Seller may have under the mortgages to which the property is subject, unless otherwise agreed to by the lender or required by law or regulation.

31. **Seller's Acknowledgment:** Seller has read this Agreement and acknowledges receipt of a copy.

Witness Dick Reece Phone _____ x Roger O Justice Seller

Print Witness Name Dick Reece Roger O Justice
 Print name as you want it to appear on documents.

Seller's Address _____

x Dixie E Justice Seller

Seller's Phone: (Res.) _____ (Bus.) _____
Dixie E Justice
 Print name as you want it to appear on documents.

DATE: _____ (time) _____

32. **Buyer's Receipt/Acceptance:** Receipt is hereby acknowledged by Buyer of Seller's acceptance of Buyer's offer. In the event the acceptance was subject to certain changes from Buyer's offer, Buyer agrees to accept said changes, all other terms and conditions remaining unchanged.

x Marion Pinkerton Buyer

Witness Richard Reece Phone _____ x _____ Buyer

DATE: _____ (time) _____

33. **Seller's Receipt:** Seller acknowledges receipt of Buyer's acceptance of counter offer.

x _____ Seller

Witness _____ Phone _____ x _____ Seller

Subject Property Address/Description

Date

Time

E.

Seller's Disclosure Statement

25011

Property Address: 68 E. Emmett B.C. MICHIGAN
 Street City, Village or Township

Purpose of Statement: This statement is a disclosure of the condition of the property in compliance with the Seller Disclosure Act. This statement is a disclosure of the condition and information concerning the property, known by the Seller. Unless otherwise advised, the Seller does not possess any expertise in construction, architecture, engineering or any other specific area related to the construction or condition of the improvements on the property or the land. Also, unless otherwise advised, the Seller has not conducted any inspection of generally inaccessible areas such as the foundation or roof. This statement is not a warranty of any kind by the Seller or by any Agent representing the Seller in this transaction, and is not a substitution for any inspections or warranties the Buyer may wish to obtain.

Seller's Disclosure: The Seller discloses the following information with the knowledge that even though this is not a warranty, the Seller specifically makes the following representations based on the Seller's knowledge at the signing of this document. Upon receiving this statement from the Seller, the Seller's Agent is required to provide a copy to the Buyer or the Agent of the Buyer. The Seller authorizes its Agent(s) to provide a copy of this statement to any prospective Buyer in connection with any actual or anticipated sale of property. The following are representations made solely by the Seller and are not the representations of the Seller's Agent(s), if any. This information is a disclosure only and is not intended to be a part of any contract between Buyer and Seller.

Instructions to the Seller: (1) Answer ALL questions. (2) Report known conditions affecting the property. (3) Attach additional pages with your signature if additional space is required. (4) Complete this form yourself. (5) If some items do not apply to your property, check NOT AVAILABLE. If you do not know the facts, check UNKNOWN. FAILURE TO PROVIDE A PURCHASER WITH A SIGNED DISCLOSURE STATEMENT WILL ENABLE A PURCHASER TO TERMINATE AN OTHERWISE BINDING PURCHASE AGREEMENT.

Appliances/Systems/Services: The items below are in working order. (The items listed below are included in the sale of the property only if the purchase agreement so provides.)

	Yes	No	Unknown	Not Available		Yes	No	Unknown	Not Available
Range/oven	<input checked="" type="checkbox"/>				Lawn sprinkler system	<input checked="" type="checkbox"/>			
Dishwasher	<input checked="" type="checkbox"/>				Water heater	<input checked="" type="checkbox"/>			
Refrigerator	<input checked="" type="checkbox"/>				Plumbing system	<input checked="" type="checkbox"/>			
Hood/fan				<input checked="" type="checkbox"/>	Water softener/conditioner				<input checked="" type="checkbox"/>
Disposal				<input checked="" type="checkbox"/>	Well & pump				<input checked="" type="checkbox"/>
TV antenna, TV rotor & controls				<input checked="" type="checkbox"/>	Septic tank & drain field				<input checked="" type="checkbox"/>
Electric System	<input checked="" type="checkbox"/>				Sump pump				<input checked="" type="checkbox"/>
Garage door opener & remote control	<input checked="" type="checkbox"/>				City water system	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>
Alarm system				<input checked="" type="checkbox"/>	City sewer system	<input checked="" type="checkbox"/>			
Intercom				<input checked="" type="checkbox"/>	Central air conditioning	<input checked="" type="checkbox"/>			
Central vacuum				<input checked="" type="checkbox"/>	Central heating system				<input checked="" type="checkbox"/>
Attic fan				<input checked="" type="checkbox"/>	Wall furnace				<input checked="" type="checkbox"/>
Pool heater, wall liner & equipment				<input checked="" type="checkbox"/>	Humidifier				<input checked="" type="checkbox"/>
Microwave				<input checked="" type="checkbox"/>	Electronic air filter				<input checked="" type="checkbox"/>
Trash compactor				<input checked="" type="checkbox"/>	Solar heating system				<input checked="" type="checkbox"/>
Ceiling fan	<input checked="" type="checkbox"/>				Fireplace & chimney	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>
Sauna/hot tub	<input checked="" type="checkbox"/>				Wood burning system	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>
Washer	<input checked="" type="checkbox"/>				Dryer	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>

Explanations (attach additional sheets, if necessary):

UNLESS OTHERWISE AGREED, ALL HOUSEHOLD APPLIANCES ARE SOLD IN WORKING ORDER EXCEPT AS NOTED, WITHOUT WARRANTY BEYOND DATE OF CLOSING.

Property conditions, improvements & additional information:

- Basement/Crawlspace:** Has there been evidence of water? yes ☒ no ☐
 If yes, please explain: City water backed up - Fixed Perm
- Insulation:** Describe, if known: Unknown ☒
 Urea Formaldehyde Foam Insulation (UFFI) is installed? unknown ☐ yes ☐ no ☒
- Roof:** Leaks? Unknown ☒
 Approximate age, if known: Unknown ☐ yes ☐ no ☒
- Well:** Type of well (depth/diameter, age and repair history, if known): Unknown ☒
 Has the water been tested? yes ☐ no ☒
 If yes, date of last report/results: Unknown

PAGE 1 OF 2

BUYER'S INITIALS

SELLER'S INITIALS Bg

Phone:

Fax:

25011

Seller's Disclosure Statement

Property Address: 68 E Emmett AC MICHIGAN
 Street City, Village or Township

5. Septic tanks/drain fields: Condition, if known: N.A.
 6. Heating system: Type/approximate age: Gas F.H.
 7. Plumbing system: Type: copper galvanized other _____
 Any known problems? _____
 8. Electrical system: Any known problems? None Circuit Breaker
 9. History of infestation, if any: (termites, carpenter ants, etc.) _____
 10. Environmental problems: Are you aware of any substances, materials or products that may be an environmental hazard such as, but not limited to, asbestos, radon gas, formaldehyde, lead-based paint, fuel or chemical storage tanks and contaminated soil on property.
 unknown _____ yes _____ no ☒
 If yes, please explain: _____
 11. Flood Insurance: Do you have flood insurance on the property? unknown _____ yes _____ no ☒
 12. Mineral Rights: Do you own the mineral rights? unknown _____ yes _____ no ☒

Other Items: Are you aware of any of the following:

1. Features of the property shared in common with the adjoining landowners, such as walls, fences, roads and driveways, or other features whose use or responsibility for maintenance may have an effect on the property? unknown _____ yes _____ no ☒
 2. Any encroachments, easements, zoning violations or nonconforming uses? unknown _____ yes _____ no ☒
 3. Any "common areas" (facilities like pools, tennis courts, walkways or other areas co-owned with others), or a homeowners' association that has any authority over the property? unknown _____ yes _____ no ☒
 4. Structural modifications, alterations or repairs made without necessary permits or licensed contractors? unknown _____ yes _____ no ☒
 5. Settling, flooding, drainage, structural or grading problems? unknown _____ yes _____ no ☒
 6. Major damage to the property from fire, wind, floods, or landslides? unknown _____ yes _____ no ☒
 7. Any underground storage tanks? unknown _____ yes _____ no ☒
 8. Farm or farm operation in the vicinity; or proximity to a landfill, airport, shooting range, etc.? unknown _____ yes _____ no ☒
 9. Any outstanding utility assessments or fees, including any natural gas main extension surcharge? unknown _____ yes _____ no ☒
 10. Any outstanding municipal assessments or fees? unknown _____ yes _____ no ☒
 11. Any pending litigation that could affect the property or the Seller's right to convey the property? unknown _____ yes _____ no ☒

If the answer to any of these questions is yes, please explain. Attach additional sheets, if necessary: _____

The Seller has lived in the residence on the property from 2007 (date) to Present (date).
 The Seller has owned the property since 2006 (date).
 The Seller has indicated above the conditions of all the items based on information known to the Seller. If any changes occur in the structural/mechanical/appliance systems of this property from the date of this form to the date of closing, Seller will immediately disclose the changes to Buyer. In no event shall the parties hold the Broker liable for any representations not directly made by the Broker or Broker's Agent.

Seller certifies that the information in this statement is true and correct to the best of Seller's knowledge as of the date of Seller's signature.

BUYER SHOULD OBTAIN PROFESSIONAL ADVICE AND INSPECTIONS OF THE PROPERTY TO MORE FULLY DETERMINE THE CONDITION OF THE PROPERTY. THESE INSPECTIONS SHOULD TAKE INDOOR AIR AND WATER QUALITY INTO ACCOUNT, AS WELL AS ANY EVIDENCE OF UNUSUALLY HIGH LEVELS OF POTENTIAL ALLERGENS INCLUDING, BUT NOT LIMITED TO, HOUSEHOLD MOLD, MILDEW AND BACTERIA.

BUYERS ARE ADVISED THAT CERTAIN INFORMATION COMPILED PURSUANT TO THE SEX OFFENDERS REGISTRATION ACT, 1994 PA 295, MCL 28,721 TO 28,732 IS AVAILABLE TO THE PUBLIC. BUYERS SEEKING SUCH INFORMATION SHOULD CONTACT THE APPROPRIATE LOCAL LAW ENFORCEMENT AGENCY OR SHERIFF'S DEPARTMENT DIRECTLY.

BUYER IS ADVISED THAT THE STATE EQUALIZED VALUE OF THE PROPERTY, PRINCIPAL RESIDENCE EXEMPTION INFORMATION, AND OTHER REAL PROPERTY TAX INFORMATION IS AVAILABLE FROM THE APPROPRIATE LOCAL ASSESSOR'S OFFICE. BUYER SHOULD NOT ASSUME THAT BUYER'S FUTURE TAX BILLS ON THE PROPERTY WILL BE THE SAME AS THE SELLER'S PRESENT TAX BILLS. UNDER MICHIGAN LAW, REAL PROPERTY OBLIGATIONS CAN CHANGE SIGNIFICANTLY WHEN PROPERTY IS TRANSFERRED.

Seller Roger O. Justus Date: 5/6/09
 Seller _____ Date: _____

Buyer has read and acknowledges receipt of this statement.

Buyer Marion Pinkerton Date: 5-08-09 Time: _____
 Buyer _____ Date: _____ Time: _____

Disclaimer: This form is provided as a service of the Michigan Association of REALTORS®. Please review both the form and details of the particular transaction to ensure that each section is appropriate for the transaction. The Michigan Association of REALTORS® is not responsible for use or misuse of form for misrepresentation or for warranties made in connection with the form.

4

Image/Sketch for Parcel: 3170-00-058-0

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Caption: 1 PHOTO(2004)



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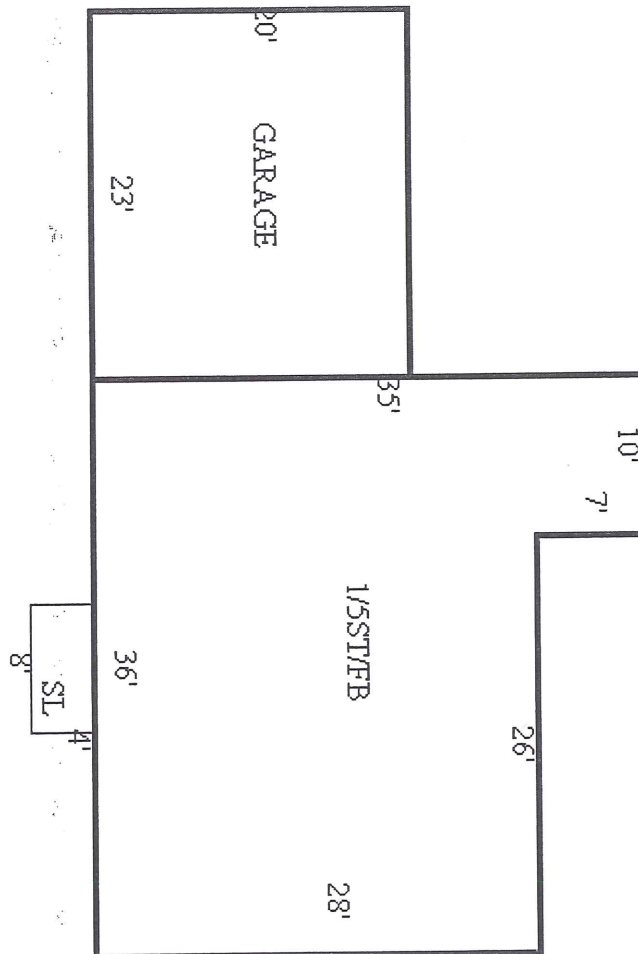
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Caption: R001

Sketch by Apex IV Windows™

3170-00-058-0



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G.

Detailed Permit Information

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Permit: PE09-00409

Property Address

[collapse]

68 E EMMETT ST
BATTLE CREEK, MI 49017-3304

Permit Information

[collapse]

Number:	PE09-00409	Category:	ELECTRICAL
Type:	Electrical	Status:	ISSUED
Applied Date:	11/19/2009	Expire Date:	05/22/2010
Issue Date:	11/19/2009	Finaled Date:	
Work Description:			
Stipulations:			

Contractor Information

[collapse]

Battle Creek Electric
602 GRAHAM LAKE TERRACE
BATTLE CREEK, MI 49015

Phone: N/A
Fax: N/A

Federal ID: N/A
Work Comp #: ACCIDENT FUND

Applicant Information

[collapse]

Battle Creek Electric
602 GRAHAM LAKE TERRACE
BATTLE CREEK, MI 49015

Phone: N/A
Fax: N/A

Date of Birth: N/A
Drivers Lic #: N/A

Owner of Issue Information

[collapse]

PINKERTON, MARION
68 E EMMETT ST
BATTLE CREEK, MI 49017-3304

Phone: N/A
Fax: N/A

Date of Birth: N/A
Drivers Lic #: N/A

Occupant of Issue Information

[collapse]

N/A

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Detailed Permit Information

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Permit: PB09-00619

Property Address

[collapse]

68 E EMMETT ST
BATTLE CREEK, MI 49017-3304

Permit Information

[collapse]

Number: PB09-00619
Type: Building

Category: BUILDING
Status: ISSUED

Applied Date: 11/25/2009
Issue Date: 11/25/2009

Expire Date: 05/24/2010
Finaled Date:

Work Description:

Remove asphalt shingels, siding on dormers install metal shingle panels. New Metal siding 8 new replacement windows 1 bay window same size Metal roofing whole house

Stipulations:

Contractor Information

[collapse]

TICHENOR INC
637 W. Michigan Avenue
Battle Creek, MI 49017

Phone: N/A
Fax: N/A

Federal ID: N/A
Work Comp #: Cincinnati Ins.

Applicant Information

[collapse]

TICHENOR

Phone: N/A
Fax: N/A

Date of Birth: N/A
Drivers Lic #: N/A

Owner of Issue Information

[collapse]

PINKERTON, MARION
68 E EMMETT ST
BATTLE CREEK, MI 49017-3304

Phone: N/A
Fax: N/A

Date of Birth: N/A
Drivers Lic #: N/A

Occupant of Issue Information

[collapse]

N/A

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Detailed Permit Information

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Permit: PP09-00271

Property Address

[collapse]

68 E EMMETT ST
BATTLE CREEK, MI 49017-3304

Permit Information

[collapse]

Number: PP09-00271
Type: Plumbing

Category: PLUMBING
Status: ISSUED

Applied Date: 12/04/2009
Issue Date: 12/04/2009

Expire Date: 06/02/2010
Finaled Date:

Work Description:

Stipulations:

Contractor Information

[collapse]

WKC PLUMBING & HEATING
PO BOX 532, 3685 B DRIVE S
BATTLE CREEK, MI 49016

Phone: N/A
Fax: N/A

Federal ID: N/A
Work Comp #: Westfield Group

Applicant Information

[collapse]

PINKERTON, MARION
68 E EMMETT ST
BATTLE CREEK, MI 49017-3304

Phone: N/A
Fax: N/A

Date of Birth: N/A
Drivers Lic #: N/A

Owner of Issue Information

[collapse]

PINKERTON, MARION
68 E EMMETT ST
BATTLE CREEK, MI 49017-3304

Phone: N/A
Fax: N/A

Date of Birth: N/A
Drivers Lic #: N/A

Occupant of Issue Information

[collapse]

N/A

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Detailed Permit Information

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Permit: PB09-00634

Property Address

[collapse]

68 E EMMETT ST
BATTLE CREEK, MI 49017-3304

Permit Information

[collapse]

Number:	PB09-00634	Category:	BUILDING
Type:	Building	Status:	ISSUED
Applied Date:	12/04/2009	Expire Date:	06/02/2010
Issue Date:	12/04/2009	Finaled Date:	
Work Description: renovation in basement game room			
Stipulations:			

Contractor Information

[collapse]

OWNER OF PROPERTY

Applicant Information

[collapse]

PINKERTON, MARION
68 E EMMETT ST
BATTLE CREEK, MI 49017-3304

Phone: N/A
Fax: N/A

Date of Birth: N/A
Drivers Lic #: N/A

Owner of Issue Information

[collapse]

PINKERTON, MARION
68 E EMMETT ST
BATTLE CREEK, MI 49017-3304

Phone: N/A
Fax: N/A

Date of Birth: N/A
Drivers Lic #: N/A

Occupant of Issue Information

[collapse]

N/A

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Detailed Permit Information

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Permit: PM09-00689

Property Address

[collapse]

68 E EMMETT ST
BATTLE CREEK, MI 49017-3304

Permit Information

[collapse]

Number: PM09-00689
Type: Mechanical

Category: MECHANICAL
Status: ISSUED

Applied Date: 12/09/2009
Issue Date: 12/09/2009

Expire Date: 06/07/2010
Finaled Date:

Work Description:

Stipulations:

Contractor Information

[collapse]

WKC PLUMBING & HEATING
PO BOX 532, 3685 B DRIVE S
BATTLE CREEK, MI 49016

Phone: N/A
Fax: N/A

Federal ID: N/A
Work Comp #: Westfield Group

Applicant Information

[collapse]

WKC PLUMBING & HEATING
PO BOX 532, 3685 B DRIVE S
BATTLE CREEK, MI 49016

Phone: N/A
Fax: N/A

Date of Birth: N/A
Drivers Lic #: N/A

Owner of Issue Information

[collapse]

PINKERTON, MARION
68 E EMMETT ST
BATTLE CREEK, MI 49017-3304

Phone: N/A
Fax: N/A

Date of Birth: N/A
Drivers Lic #: N/A

Occupant of Issue Information

[collapse]

N/A

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General Property Information

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Parcel: 3170-00-058-0

Property Address	[collapse]
68 E EMMETT ST BATTLE CREEK, MI 49017-3304	

Owner Information	[collapse]
PINKERTON, MARION GREEN, RICHARD N/A	
Unit:	52

Taxpayer Information	[collapse]
PINKERTON, MARION GREEN, RICHARD 68 E EMMETT ST BATTLE CREEK, MI 49017-3304	

General Information for Tax Year 2009				[collapse]
Property Class:	401	Assessed Value:	\$54,524	
School District:	13020 - BATTLE CREEK SCHOOLS	Taxable Value:	\$54,524	
State Equalized Value:	\$54,524	Map #	706NW	
User Number Indx:		Date of Last Name Chg:	09/18/2009	
Date Filed:	09/01/2009			
Principal Residence Exemption (2009 May 1):	0.0000 %			
Principal Residence Exemption (2009 Final):	0.0000 %			
Principal Residence Exemption (2010 May 1):	100.0000 %			
Previous Year Info	MBOR Assessed	Final S.E.V.	Final Taxable	
2008	\$54,524	\$54,524	\$54,524	
2007	\$54,150	\$54,150	\$47,987	

Land Information				[collapse]
Acreage:	0.19	Frontage:	75.00 Ft.	
Zoning Code:	R1C	Depth:	110.00 Ft.	
Land Value:	\$6,504	Mortgage Code:	N/A	
Land Improvements:	\$0	Lot Dimensions/Comments:		
Renaissance Zone:	NO			
ECF Neighborhood Code:	20500			

Legal Information for 3170-00-058-0	[collapse]
ASSRS PLAT OF FREMONT HEIGHTS LOT 58 & W 25 FT OF LOT 59	

Sales Information

4 sale record(s) found.						
Sale Date	Sale Price	Instrument	Grantor	Grantee	Terms Of Sale	Liber/Page
09/01/2009	\$100,000.00	05	JUSTICE, ROGER D & DIXIE	PINKERTON, MARION/GREEN, RICHARD	05 WAR DEED	3488/0276
03/26/2007	\$97,500.00	05	GIDDINGS TRUST, THOMAS & MARY	JUSTICE, ROGER D & DIXIE	05 WAR DEED	3254/0596
01/01/2007	\$0.00	12	GIDDINGS, MARY F	(DECEASED)	12 QCD/OTHER	0000/0000
02/06/2003	\$0.00	12	GIDDINGS, THOMAS D	(DECEASED)	12 QCD/OTHER	0000/0000

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Use Variance Standards Revised Nov 2009

1. Will a strict application of the provisions of the zoning ordinance related to the use of the land impose upon the property owner an unnecessary hardship? (§1234.04 (b)(2))
 - a. "Unnecessary hardship" has been interpreted under Michigan case law to amount to "a taking."
 - b. If there is not an "unnecessary hardship" if the property owner is not permitted to use the land in the manner prohibited by the particular zoning district, then the standards have not been met and the variance should be denied. CAN THE PROPERTY REASONABLY USED IN COMPLIANCE WITH THE ZONING CODE? If it can, then THERE IS NOT AN UNNECESSARY HARDSHIP and the use variance should be denied.
 - c. If there is an "unnecessary hardship," then the standards have been met thus far and continue to below #2 for further consideration.
2. Is the proposed variance in harmony with the general purpose and intent of the zoning code? (§1234.04 (b)(2))
 - a. If it is not in harmony with the general purpose and intent of the zoning code, then the variance request should be denied as it has not met the standards.
 - b. If the variance is in harmony with the general purpose and intent of the zoning code, then the variance standards have been met THUS FAR and you should continue to below #3 for further consideration.
3. Will the granting of the variance serve as merely a convenience to the applicant or will it alleviate some demonstrable and unusual unnecessary hardship so great as to warrant a variation from the master plan? (§1234.04 (b)(2))
 - a. If granting the variance will serve merely as a convenience to the applicant, then the variance standards have not been met and the variance should be denied.
 - b. If granting the variance will not merely serve as a convenience and it will alleviate some demonstrable and unusual unnecessary hardship so great as to warrant a variation from the master plan, then the standards have been met thus far and you MUST MOVE TO THE BELOW CRITERIA AND EACH MUST BE PRESENT TO GRANT THE VARIANCE. (§1234.04 (c))
 - (1) It has been clearly demonstrated by the petition that unnecessary hardship will, in fact, exist if such variance is not granted.
 - (3) The appellant did not create the unnecessary hardship.

- (4) The alleged unnecessary hardship is exceptional and peculiar to the property of the person requesting a variance and result from conditions which do not generally exist throughout the City.
- (5) The applicant furnished documentation to indicate that unnecessary hardships do, in fact, exist.
- (6) The term hardship shall not be deemed financial hardship relating to the cost or size of a sign, the fact that a sign has already been erected or the fact that a sign is only available in standard sizes. (Dealing specifically with signs.)
- (7) The alleged unnecessary hardship which will result from a failure to grant the variance must include substantially more than a mere inconvenience or a mere inability to attain a higher financial return. (Already determined the first part was satisfied in above #3.)
- (8) Substantial justice will be done in granting the use variance, considering the public benefits intended to be secured by this Zoning Code, the individual hardships that will be suffered by a failure of the Board to grant a variance and especially the rights of others whose property would be affected by the allowance of the variance.
- (9) Every finding of fact of the Board shall be supported in the record of proceedings of the Board.
- (10) Nothing contained in this section shall be construed to authorize the Board to change the terms of this Zoning Code.



Christine M
Hilton/BattleCreek
01/04/2010 12:06 PM

To Glenn F Perian/BattleCreek@BattleCreek
cc
bcc
Subject Fw: 68 E Emmett

To include with the ZBA packet....

Christine M. Hilton, AICP
Planning Supervisor, City of Battle Creek
Commerce Pointe Building
77 E. Michigan Avenue, Ste 204
Battle Creek, MI 49017
Tel: (269) 966-3320 Fax: (269) 966-3529

----- Forwarded by Christine M Hilton/BattleCreek on 01/04/2010 12:05 PM -----

From: Sarah E McGinnis/BattleCreek
To: Marcie M Gillette/BattleCreek@BattleCreek, Christine M Hilton/BattleCreek@BattleCreek
Cc: Michelle A Reen/BattleCreek@BattleCreek
Date: 12/23/2009 03:22 PM
Subject: 68 E Emmett

Just an FYI...

I spoke with Rita Ganey (58 E Emmett) today and she received a letter about the Zoning Board Meeting in January regarding 68 E. Emmett. She is elderly and may not be able to make the meeting but is planning on sending her daughter on her behalf. She is opposed to 68 Emmett being a rental property. She informed me that there are 3 apartments in the house and there have been numerous police/tenant problems in the past. She is very concerned about the possible zone changes that could be approved, reducing the value of her home and the neighborhood. I recommended that she put her concerns in writing and send it with her daughter to the meeting.

Please let me know if you have any questions.

Thanks

Sarah McGinnis
Office of the City Clerk
Customer service
269-966-3348 Ext. 1211

